In the High Court of Punjab and Haryana at Chandigarh.

Civil Writ Petition No.1590 of 1986.

Date of decision:5-12-2007

United News of India.

...Petitioner.

Versus

The Presiding Officer and another.

...Respondents.

...

Coram: Hon'ble Mr. Justice K. C. Puri.

...

Present: Mr. A. S. Khaira, Advocate for the petitioner.

Mr. Raman Sharma Advocate for the respondent No.2.

...

Judgment.

K. C. Puri, J.

This is a writ petition filed by United News of India, New Delhi for quashing the award of the Labour Court dated 17.10.1985 vide which Babu Ram workman has been reinstated with continuity of service with full back wages.

The petitioner has pleaded that respondent Babu Ram was appointed as a Stringer for a specified area for collecting and reporting news items to the U.N.I. Such Stringers are not employees of the U.N.I. and they are given very nominal retainership in the shape of honorarium ranging from Rs.30/- to Rs.75/-.Four news agencies i.e. Press Trust of India, United

News of India, the Hindustan Samachar and Samachar Bharti have merged under the name of Samachar on 2.4.1976. However, these were again bifurcated in the original agencies on 13.4.1978.

It is further pleaded that respondent No.2 has been appointed as a Stringer by the U.N.I. The U.N.I has no disciplinary or any other control over the Stringers and the Stringers were not required to work for news agency for any fixed hours on any fixed days. They were not to get leave sanctioned from the U.N.I and as such there is no relationship of master and servant between U.N.I and the Stringers. There was bifurcation of Samachar into original news agencies on 13.4.1978. Respondent No.2 was retained on 21.7.1978 and he used to send news from Bhatinda on payment of Rs.30/- per month. The honorarium of respondent No.2 was increased from Rs.30/- to Rs.50/- which was ultimately increased to Rs.75/- vide letter dated 28.12.1978. On 16.3.1979, the retainership of respondent No.2 as Stringer was terminated. Respondent No.2 served a demand notice under Section 2 of the Industrial Disputes Act (in short the Act) on 4.5.1981 alleging that his services have been wrongly terminated and ultimately the matter was decided by the Labour Court vide award dated 17.10.1985 holding the termination of respondent No.2 as invalid and he was entitled to reinstatement with continuity of service and full back wages. The said award is illegal and against the provisions of the Act. The respondent No.2 was not a workman as defined in Section 2(s) of the Act. The Labour Court has wrongly held that respondent No.2 was working as Working Journalist under the Working Journalists and Newspaper Employees (Conditions of Service and Miscellaneous) Act, 1955. The authority reported as 1964

Supreme Court 279 is not applicable to the case of the petitioner as the petitioner was not a Working Journalist and the retainership of respondent No.2 was terminated in the year 1979 as he has not completed 240 days. Respondent No.2 was given fresh appointment on 21.7.1978. So, respondent No.2 cannot have the benefit of Sections 25B and 25F of the Act. Respondent No.2 has accepted the offer dated 21.7.1978 and acknowledgement Annexure P-2 has been placed on the file. There is no evidence on the file that respondent No.2 had continuously worked with Samachar after the merger of various agencies into Samachar. The respondent No.2 was working with various newspapers and earning Rs.800/- per month. He was not residing at Bhatinda and was residing at Mansa. So, the award dated 17.10.1985 has been challenged.

Respondent No.2 in the written statement has denied the contents of the writ petition and has pleaded that he was appointed by the UNI in the year 1972 and since then he is working there. The award of the Labour Court is perfectly justified and does not call for any interference.

Mr. A.S.Khaira, learned counsel for the petitioner has argued on the lines of pleadings, referred to above and has submitted that respondent No.2 has not completed 240 days of his service as he was given fresh appointment on 21.7.1978. His services were terminated on 16.3.1979 and as such there was no applicability of Section 25F of the Act. It is also submitted that respondent No.2 has shifted from Bhatinda to Mansa and on that count also, he is not entitled to reinstatement and back wages.

It is further submitted that respondent No.2 has himself admitted in the affidavit that he superannuated from the Tribune in the year

1991 and as such the claim of respondent No.2 regarding reinstatement could not be accepted. It is further submitted that respondent No.2 was not a workman within the definition of Section 2 of the Act and as such the learned Labour Court has wrongly ordered his reinstatement with continuity in service and back wages.

The counsel for respondent No.2 has submitted that the authority reported in **Express Newspaper Versus Somayajulau,** AIR 1964 Supreme Court 279 clearly lays down that part time correspondent is within the domain of Working Journalist and as such is a workman. Mere fact that Annexure P1 dated 21.7.1978 has been issued does not render the past service of respondent No.2 with the petitioner as nugatory. The petitioner has himself admitted the fact in the petition that respondent No.2 was employed in the year 1972 and his services were terminated only 16.3.1979 and as such it does not lie in the mouth of counsel for the petitioner that the respondent No.2 has not completed 240 days and as such his retrenchment is valid.

I have given my careful consideration to the rival submissions made by both sides and have gone through the record of the case.

The learned Labour Court has granted two reliefs to the workman:-

(a) Reinstatement with continuity in service.

(b) Full back wages.

So far as the relief of reinstatement is concerned, that has become infructuous. Admittedly, the petitioner retired from the Tribune in the month of February,1991 on attaining the age of superannuation. So, the

relief of reinstatement is not available to the petitioner.

The second relief granted by the learned Labour Court is regarding full back wages. Now, the question arises whether the workman, now respondent No.2, is entitled to claim that relief of full back wages.

First of all, the fore-most question for granting back wages is whether the petitioner before the Labour Court was workman. The Labour Court after relying upon the authority **Express News Paper** (supra) came to the conclusion that even part time Working Journalists fall within the definition of workman. I have no reason to differ with the findings of the learned Labour Court which are based upon the authority of Hon'ble Supreme Court.

The other contention raised by the counsel for the petitioner is that the workman has not completed 240 days and on that count, his retrenchment cannot be held to be valid. I have carefully considered that submission, but, find myself unable to subscribe to that submission. Admittedly, the respondent No.2 joined with the petitioner in the year 1972. There is nothing on the file that the services of the respondent No.2 were terminated at any stage. No document has been placed on the record before the learned Labour Court or in the present writ petition. Reliance of the counsel for the petitioner on the appointment letter dated 21.7.1978 does not help the petitioner in any manner. The employer cannot alter the terms of appointment unilaterally, more so when the workman is in service since 1972. Mere fact that four news groups including that of the petitioner have merged and thereafter bifurcated does not affect the right of the workman.

So far as submission made by the counsel for the petitioner that

since the petitioner has no control over the workman as such the respondent No.2 cannot be held to be a workman is concerned, that submission is without any substance. As discussed above, even a part time Journalist is a workman in view of authority reported as **Express News Paper** (supra).

The learned counsel for the petitioner has submitted that respondent No.2 has shifted from Bhatinda to Mansa and on that count, he is not entitled to back wages. That submission also cannot be accepted. The petitioner has not brought on the file when respondent No.2 shifted to Mansa. There is no evidence on the file to warrant the conclusion that the respondent No.2 has shifted to Mansa prior to termination of his services on 16.3.1979.

So far as submission made by the counsel for the petitioner to the effect that respondent No.2 was earning Rs.800/- per month from various newspapers and on that count, he is not entitled to back wages is concerned, that submission cannot be accepted. The respondent No.2 was working as part time Journalist and not on whole time basis. Even if the respondent No.2 was working in other newspapers and was earning any amount, in that case also, full back wages allowed to the respondent No.2 cannot be with-held. Had the respondent No.2 been employed on whole time, in that case, the said contention of learned counsel for the petitioner could have been accepted.

The submission made by the counsel for the petitioner to the effect that benefits of Section 25Band 25F of the Act cannot be given to respondent No.2 is concerned, the same is also meritless. The counsel for the petitioner could not convince how these provisions are not applicable in

the present case.

In view of the above discussion, the writ petition is without any merit and the same stands dismissed.

December 5 ,2007. (K. C. Puri)
Jaggi Judge